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ABSTRACT

The ability of the Kentucky Educational Reform Act (KERA) to address both educational equality and financial equity in the Kentucky public education system is examined in this paper. Following an overview of the conditions that facilitated the act's passage in 1990, the next section discusses the philosophical background of the concepts of equality and equity. Comparable decisions that declared educational financing unconstitutional in other states are discussed next, and components of the KERA are highlighted in the following section. A conclusion is that the state legislature used this opportunity to address the overall needs of education in Kentucky without adequately addressing the crucial issue of inequality. Outcomes included no reduction in funding gaps between the richer and poorer districts, and the continued practice of district-raised taxes for local support. A conclusion is that funding inequities may be exacerbated, rather than reduced, in the long term. (LMI)

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An abstract of a paper prepared for presentation at the annual meeting of the **American Educational Finance Association** in Williamsburg, VA, March 14-17, 1991.

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AN ANALYSIS OF KERA: KENTUCKY'S ANSWER TO EDUCATIONAL EQUITY

ABSTRACT

The Kentucky Educational Reform Act (KERA) was passed by the Kentucky General Assembly in 1990 and was nationally recognized as one of the premier state educational reform efforts in the country. The law was designed to focus the state's efforts and resources on the improvement of student learning through a redistribution of financial resources in the Commonwealth. The plethora of school finance reform court cases of the 1980's led many states to inaction rather than action in correcting funding inequities between school districts. Kentucky legislators were forced to examine their states' system of funding due to litigation brought in 1987 by sixty-six local school districts and several individuals, including students. The key concept under investigation in this paper is the ability of KERA to address both equality and equity of financial contributions by the state of Kentucky to the public education system.

INTRODUCTION

The Council for Better Education, Inc. a non-profit Kentucky corporation whose membership consisted of sixty-six local school districts in the state originally filed a suit in the Franklin Circuit Court alleging that the state system

for financing schools was unequal. The original suit was head by the Honorable Ray Corns, who ruled for the plaintiffs . Consequently, the President Pro Tempore of the State Senate and the Speaker of the State House of Representatives appealed the ruling to the state supreme court. Kentucky Supreme Court on June 8, 1989 held that state revenues were unequally allotted to local school districts, and directed the state legislature to remedy the problem. The leadership of the Kentucky General Assembly appealed Judge Corns' decision to the Kentucky Supreme Court. On June 8, 1989, Chief Justice Stephens writing for the court, ruled that "The common school system in Kentucky is constitutionally deficient." Chief Justice Stephens went on to say:

> "In reaching this decision, we are ever mindful of the immeasurable worth of education to our state and its citizens, especially to its young people. The framers of our constitution intended that each and every child in this state should receive a proper and an adequate education, to be provided for by the General Assembly . . .We do no more, nor may we do any less."

By this ruling the state system of public education was essentially terminated with the General Assembly being required to develop a new "efficient system of common schools throughout the state." The resulting legislation, the Kentucky Education Reform Act (KERA) of 1990. has been hailed as historic and unprecedented by its supporters, and as much to do about nothing by its critics. Although the original lawsuit was brought before the court on inequality

grounds, little of the actual legislation specifically deals with the equitable allocation of funds to local school districts. Rather the legislation is focused on the expenditure of funds through various programs and other reforms of the state educational system. Obviously, the reform were probably needed and long overdue, and will no doubt, improve the quality of education for children in Kentucky schools, but the key question of equality was rather unceremoniously "swept under the rug."

The new funding formula was based on several considerations: a state guaranteed base funding level, average daily attendance, the number of at-risk students in the district, the number of exceptional children in the district, and transportation costs. Each district was to receive no less than a five percent increase in funding, nor more than a twenty-five percent increase in funding during the first biennium. All these factors were found in the old funding formula, nothing new is addressed here. Also, why would any of the school districts fight or even question this new program, most received at least ten percent new funds for the first biennium.

KERA did address one age old problem in school equity, the assessment of property value and the collection of such assessment. The law required all real property subject to taxation be assessed at 100 percent of fair cash value and also established procedures for the collection of the valuations. In addition, all local school districts were required to levy a minimum equivalent tax rate of thirty

cents per hundred dollar valuation for general school purposes. This was for the purpose of paying their proportional share of the funds needed to operate at a "minimum level."

EQUALITY V. EQUITY

Even though the concept of inequality in education appears to be a concern of the present century, its origin can be traced back to the 16th and 17th centuries. Some of the mercantilists, like Hales and Malynes who were essentially feudalistic in their outlook, wanted education to be confined to specific privileged groups of society. While Edward Misselden and Thomas Mun wanted education to be extended to industrial workers besides merchants, it was William Petty who first advocated equitable distribution of education. Nehenia Green and James Stewart also of the Mercantilist period, advocated mass education so as to increase agricultural productivity in particular and society's progress in general. Lord Palmerston favored the spread of literacy. The 18th and 19th century school reformers in the United States like Horace Mann, Henry Barnard, James G. Carter, Robert Dale Owen, and George H. Evans favored educational opportunities to be extended to the poorer groups. Horace Mann, a typical example of these reformers, viewed the school as an effective instrument to achieve justice and equality of opportunity and remove poverty. In fact, as Husen (1981) concludes, "the roots of the classical liberal conception of equality of

educational opportunity are in the 18th century with Locke, Helvetius and most important of all, Jean Jacques Rousseau."

However, the early classical economists saw little place for education as a strictly economic investment--except as it might contribute indirectly through its effects on population and civic order. Nevertheless, most of them from Adam Smith to Alfred Marshall, including David Ricardo, Thomas Robert Malthus, John Stuart Mill and Massu William Senior, recognized the importance of education. In fact the classical, neo-classical and Marxian economists paid relatively more attention to the micro relationship between education and personal efficiency. And at the social level, the liberal version of equality of opportunity prevailed in most of the country well into the late 1960s.

It was only since the mid-50s of the present century that economist began paying serious attention to education. The economic principle had clearly established that education is for the most part an investment and an important component of human capital. As accumulation of capital in general is necessary for economic progress, expansion of investment in education contributes to the accumulation of human capital and, in turn, to economic progress. And since education is capital in this sense, its equitable distribution maximizes social welfare. The contribution of education to economic growth is now widely recognized.

The reasons for differential rates of return are to be found in the

functioning of the school system. The main reason for differential returns can be traced to the following factors:

1. Inequality in educational opportunity.
2. Inequality in quality of schooling.
3. Inequality in investment in education.

Initially in America, the idea of equality was pretty well accepted and was even included in the Declaration of Independence that all men were created equal. The psychological principle behind this is in large measure the philosophy of John Locke. Locke denied the existence of innate ideas but said that men are born with a mind analogous to a clean sheet of paper upon which experience writes all the originals of knowledge. Helvious in the 18th century expounded that all intellects in the original state are equal and the differences which do in fact distinguish men result from their educations. The doctrine that all men are endowed with the same potential from their creator was abundant in the early life of this country and was a direct outgrowth of the beliefs of Emerson.

Eventually the emphasis came to be on the uniqueness of the individual. This takes the difference of each man into consideration which is a equally significant problem in a society that stresses heterogeneity rather than homogeneity. Human abilities are products of transactions between individuals and their environments. The more uniform the educational outcomes we seek, the more varied must be the procedures and the materials we use. Traditionally,

equality is defined as meaning equal treatment for all. In comparison, equity means the distribution and expending of available resources with fairness and without partiality to all. Consequently educational opportunity should allow each individual to develop to the fullest capacity, given reasonable effort and motivation. This concept depends upon consideration of individual differences, needs, and motivations. Thus, equalization of educational opportunity from the viewpoint of the individual is not sameness or uniformity, but equal treatment of diversities.

Equality refers to the state, ideal, or quality of being equal, as in the state of enjoying equal social, political, and economic rights. In modern times, within the sociopolitical context, operational definitions of equality also include factors of condition, placing emphasis on the appropriateness of treatment. As such, equality has taken on the connotations of equity, which is defined as "the state, ideal, or quality of being just, impartial and fair" (Morris, 1969, p. 443). Consequently, equality and equity are used in terms of civil rights and not of personal characteristics and abilities. The law of equity permits individuals or groups to seek judicial redress when it is believed that principles of fairness are not served by governmental policies and statutes. The plaintiffs in this school finance suit contended that variations in spending created by state finance structures violated state constitutional provisions.

The Kentucky Supreme Court has had the burden of defining a

constitutionally efficient system of public education. A typical dictionary definition of efficiency might read as follows: "effective operation as measured by a comparison of production with cost (as in energy, time, money)." If the Supreme Court had accepted that definition in operational terms, the conclusion might be given that the very low cost (i.e., expenditure per pupil) shown by many of the property poor districts would be efficient merely by continuing to operate. However, the state high court relied on case law and experts and employed a much broader definition of efficiency. When the current system was examined against this broader definition of efficiency, the state's entire public education system was declared unconstitutional.

COMPARABLE DECISIONS

Numerous court rulings preceded the Kentucky Supreme Court decision, and doubtless many more will follow. In 1973 the U. S. Supreme Court decided by a narrow 5-to-4 vote that the system of school financing in Texas, then one of the most extreme in terms of allowed spending and taxing, did not violate the U.S. Constitution's Fourteenth Amendment. However, within a month the New Jersey Supreme Court ruled that New Jersey's school finance plan violated the state's education clause which charged the legislature with the provision of a statewide "through and efficient system of education." Following the New Jersey decision, dozens of other cases were filed in other states including

California. The classic California ruling Serrano v. Priest was a landmark in educational financing. In part the ruling stated:

> "We are called upon to determine whether the California public school financing system, with its substantial dependence on local property taxes and resultant wide disparities in school revenue, violates the equal protection clause of the Fourteenth Amendment. We have determined that this funding scheme invidiously discriminates against the poor because it makes the quality of a child's education a function of the wealth of his parents and neighbors. Recognizing as we must that the right to an education in our public schools is a fundamental interest which cannot be conditioned on wealth, we can discern no compelling state purpose necessitating the present method of financing. We have concluded, therefore, that such a system cannot withstand constitutional challenge and must fall before the equal protection clause."
>
> The California judges went on to say:
>
> "By our holding today we further the cherished idea of American education that in a democratic society free public schools shall make available to all children equally the abundant gifts of learning. This was the credo of Horace Mann, which has been the heritage and the inspiration of the country. 'I believe.' he wrote, 'in the existence of a great, immortal immutable principle of natural law, or natural ethics,--a principle antecedent to all human institutions, and incapable of being abrogated by

any ordinance of man. . .which proves the *absolute right* to an education of every human being that comes into the world, and which, of course, proves the correlative duty of every government to see that the means of that education are provided for all. . .' (Old South Leaflets V, No. 109 (1846) pp 177-180 (Tenth Annual Report to Mass State Bd of Ed), quoted in Readings in American Education (1963 Lucio ed) p 336)."

GENERAL COMPONENTS OF KERA

In recent years no state has enacted changes as sweeping as Kentucky's--and backed these changes with the funding necessary to implement them. In the first year of the new law, 1990-91, state spending on education will rise by more than 25 percent. In fact, Kentucky has enacted what may be the most ambitious statewide educational reform package in history. The massive reform establishes a new funding system designed to close the gap between the state's richest and poorest districts. Before the law was enacted, some of the state's wealthy districts were spending more than $3,000.00 per pupil per year while many of the smaller, rural districts spend less than $1,800.00 per pupil. The new law establishes a guaranteed minimum per pupil spending level of $2,900.00 in the 1990-91 school year. Overall state financing for elementary and secondary education will increase from $1.5 billion in 1989-90 to $1.9 billion in 1990-91, more than a 25 percent increase.

The Kentucky Supreme Court ruling was based on four issues: 1. defining the phrase "an efficient system of common schools" as contained in Section 183 of the Kentucky Constitution; 2. determining whether or not education is a "fundamental right" under the Kentucky Constitution, 3. deciding whether or not Kentucky's current method of financing its common schools violated Section 183, and 4. whether student in the "poor" districts were denied equal protection by the laws.

The Supreme Court ruling defined efficient as a system that required "substantial uniformity, substantial equality of financial resources and substantial equal educational opportunity for all students." Subsequently, the ruling found that education was a "fundamental right" and that the current method of financing was unconstitutional. Clearly then, student were denied equal access to educational opportunities.

The new funding law specified that it was

> "the intention of the General Assembly to assure substantially equal public school educational opportunities for those in attendance in the public school of the Commonwealth, but not to limit nor to prevent any school district from providing educational services and facilities beyond those assure by the state supported program. The program shall provide for an efficient system of public schools throughout the Commonwealth. . .and for the manner of distribution of the public school fund among the districts

and its use for school purposes. . ."

Interestingly, the very cause of the original lawsuit, inequality is again perpetuated in this new law. The real cause of inequality in Kentucky schools is not the "minimal" program offered to students, but rather the inequality that exists when certain districts are able to raise substantially more funds than the "poorer" districts. Then the question must be asked, what makes this system different from the one previously ruled unconstitutional? Numerous critics of the new funding plan believed that the very intent of the Supreme Court ruling, to take effectively take politics out of Kentucky education, was undermined by the new legislation. In fact, Brown and Elmore (1982, p. 113) contend at "the closer one gets to the process of reform in specific states, the more elusive equity seems and the more complex are the values and objectives operating on reform proposals."

The new law specified that

"each district which meets the following requirements shall be eligible to share in the distribution of funds . . . : (1) Employs and compensates all teachers for not less than on hundred eighty-five (185) days. (2) Operates all schools for a term as provided in . . . administrative regulation of the State Board for Elementary and Secondary Education. (3) Compensates all teachers on the basis of a single salary schedule and in conformity with the provisions . . . (4) Includes no nonresident pupils in its daily

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attendance . . . (5) Any secondary school which maintains a basketball team for boys for other than intramural purposes , shall maintain the same program for girls; (6) Any school district which fails to comply with subsection (5) shall be prohibited from participating in varsity competition in any sport for one (1) year."

Interestingly, so-called "pork barrel legislation" reared its head, even in this ambitious attempt at educational reform. The mention of athletics in general and basketball in particular, is a source of both animosity and pride for state residents. But why the reference to basketball in a reform proposal of this magnitude? Notice again that this new law does not address true "site-based management" as proposed in other sections of the law. Under this provision the state determines salary, the number of days teachers are employed, and who plays basketball. Site-based management would allow local schools and districts to determine teacher compensation issues.

The new law also defined, to a certain extent, the state funding levels: . "(1) . . .the statewide guaranteed base funding level . . . shall be computed by dividing the amount appropriated for this purpose by the prior year's statewide average daily attendance. (2) Each district shall receive an amount equal to the base funding level for each pupil in average daily attendance in the district in the previous year. Each district's base level shall be adjusted by the following factors: (a) The number of at-risk

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students in the district. (b) The number and types of exceptional children in the district . . . (c) Transportation costs."

Again, how is this formula different from that of past years, the same elements, ADA, exceptional children and transportation drive this formula as its predecessor? Court decisions subsequent to *Brown v. Board of Education* have determined that absolute equality of resources denies all children equality of educational opportunity. The recent Kentucky decision presents the principle of equity as a broader concept than that of equality and imply that children have the right of access to instructional programs appropriate to their individual learning potentials. However, equalizing educational opportunity does not necessarily mean equal dollars per pupil nor equal dollars per program; equity, in this context, requires additional funds for programs that serve legitimate educational needs. The original Kentucky challenge to the school finance system explored the concept of equality as it relates to disparities in wealth among school districts and the impact of those disparities on the districts ability to finance educational programs.

CONCLUSIONS

Historically courts have had difficulty responding to observed inequities in the distribution of funds by legislative bodies. In Kentucky, the state Supreme Court promoted a new remedy, declare the system unconstitutional and force the legislative branch of government to address the issue. The real concern however,

is that the Kentucky legislature used this opportunity to address the overall needs of education in Kentucky with adequately addressing the issue at the hear of the discussion, inequality. The new law provided much needed additional funds for the poorer districts but also provided additional funds for the richer districts, doing little to reduce the gap between the "have" and "have nots." Further, districts were allowed to continue their tradition of raising taxes to make local contributions to the school system. The logical conclusion is that the funding inequities may be exacerbated in the long term, not reduced.

However, this educational reform package was necessary to revolutionize the thinking and attitudes of the public policy makers towards education, such that education was eventually regarded not only as a productive investment, but an all pervasive development activity of human welfare. The results of such action are open to scrutiny to determine whether this new system of funding is more equitable than the previous system. Finding revenues to help poorer districts compete on a more equal level with richer districts without penalizing the more affluent districts will be a difficult task. Regardless of the economic or political difficulties involved, school finance equality is an issue that is not going to disappear. And in Kentucky, all the votes have not been counted!

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